



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2010

Mr. Scott A. Durfee  
Assistant General Counsel  
Harris County District Attorney's Office  
1201 Franklin Street, Suite 600  
Houston, Texas 77002-1923

OR2010-10373

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386341.

The Harris County District Attorney (the "district attorney") received a request for all video and the incident report relating to a specified incident involving a named individual. Although you take no position as to the public availability of the submitted documents, you state release of this information may implicate the privacy interests of the named individual. Accordingly, you state that the district attorney notified the named individual's attorney of this request for information and of his right to submit arguments to this office as to why the requested documents should not be released. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information.

As of the date of this letter, we have not received any comments from the named individual's attorney explaining why any portion of the submitted information should not be released to the requestor. However, portions of the submitted information are excepted from disclosure

under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> Accordingly, we will address these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we conclude the information we have marked is confidential under chapter 411. Accordingly, the district attorney must withhold the information we have marked under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has also found that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the district attorney must withhold this information under section 552.101 of the Government Code in conjunction with the common-law right of privacy.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license, permit, title, or registration. Gov't Code § 552.130(a)(1), (2). Accordingly, the district attorney must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>2</sup>

In summary, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The district attorney must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 386341

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Robert Pelton  
c/o Scott A. Durfee  
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